

or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigations include investigations conducted for the purpose of making personnel security determinations. They also include investigations of allegations that may arise subsequent to favorable adjudicative action and require resolution to determine a person's current eligibility for access to classified information or assignment or retention in a sensitive position.

§ 275.4 Policy.

It is DoD policy that:

(a) Authorization of the customer to whom the financial records pertain shall be sought unless doing so compromises or harmfully delays either a legitimate law enforcement inquiry or a lawful intelligence activity. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by subpart B shall be utilized.

(b) The provisions of 12 U.S.C. Chapter 35 do not govern obtaining access to financial records maintained by military banking contractors located outside the United States, the District of Columbia, Guam, American Samoa, Puerto Rico, and the Virgin Islands. The guidance set forth in Appendix N of subpart B may be used to obtain financial information from these contractor operated facilities.

§ 275.5 Responsibilities.

(a) The Director of Administration and Management, Office of the Secretary of Defense shall:

(1) Exercise oversight to ensure compliance with this part.

(2) Provide policy guidance to affected DoD Components to implement this part.

(b) The Secretaries of the Military Departments and the Heads of the affected DoD Components shall:

(1) Implement policies and procedures to ensure implementation of this part when seeking access to financial records.

(2) Adhere to the guidance and procedures contained in this part.

APPENDIX A TO PART 275—OBTAINING BASIC IDENTIFYING ACCOUNT INFORMATION

A. A DoD law enforcement office may issue a formal written request for basic identifying account information to a financial institution relevant to a legitimate law enforcement inquiry. A request may be issued to a financial institution for any or all of the following identifying data:

1. Name.
2. Address.
3. Account number.
4. Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

B. The notice (paragraph B of Appendix C to this part), challenge (paragraph D of Appendix C to this part), and transfer (paragraph B. of Appendix G to this part) requirements of this part shall not apply when a Government authority is seeking only the above specified basic identifying information concerning a customer's account.

C. A format for obtaining basic identifying account information is set forth in Appendix I to this part.

APPENDIX B TO PART 275—OBTAINING CUSTOMER AUTHORIZATION

A. A DoD law enforcement office or personal security element seeking access to a person's financial records shall, when feasible, obtain the customer's consent.

B. Any authorization obtained under paragraph A. of this appendix, shall:

1. Be in writing, signed, and dated.
2. Identify the particular financial records that are being disclosed.
3. State that the customer may revoke the authorization at any time before disclosure.
4. Specify the purposes for disclosure and to which Governmental authority the records may be disclosed.
5. Authorize the disclosure for a period not in excess of 3 months.

6. Contain a "State of Customer Rights" as required by 12 U.S.C. Chapter 35 (see Appendix J to this part).

7. Contain a Privacy Act Statement as required by 32 CFR part 310 for a personnel security investigation.

C. Any customer's authorization not containing all of the elements listed in paragraph B. of this appendix, shall be void. A customer authorization form, in a format set forth in Appendix J to this part, shall be used for this purpose.

D. A copy of the customer's authorization shall be made a part of the law enforcement or personnel security file where the financial records are maintained.

E. A certificate of compliance stating that the applicable requirements of 12 U.S.C.

Chapter 35 have been met (Appendix M to this part), along with the customer's authorization, shall be provided to the financial institution as a prerequisite to obtaining access to financial records.

APPENDIX C TO PART 275—OBTAINING ACCESS BY ADMINISTRATIVE OR JUDICIAL SUBPOENA OR BY FORMAL WRITTEN REQUEST

A. Access to information contained in financial records from a financial institution may be obtained by Government authority when the nature of the records is reasonably described and the records are acquired by:

1. *Administrative Summons or Subpoena.* a. Within the Department of Defense, the Inspector General, DoD, has the authority under the Inspector General Act to issue administrative subpoenas for access to financial records. No other DoD Component official may issue summons or subpoenas for access to these records.

b. The Inspector General, DoD shall issue administrative subpoenas for access to financial records in accordance with established procedures but subject to the procedural requirements of this appendix.

2. *Judicial Subpoena.*

3. *Formal Written Request.*

a. Formal requests may only be used if an administrative summons or subpoena is not reasonably available to obtain the financial records.

b. A formal written request shall be in a format set forth in Appendix K to this part and shall:

1. State that the request is issued under 12 U.S.C. Chapter 35 and the DoD Component's implementation of this part.

2. Describe the specific records to be examined.

3. State that access is sought in connection with a legitimate law enforcement inquiry.

4. Describe the nature of the inquiry.

5. Be signed by the head of the law enforcement office or a designee.

B. A copy of the administrative or judicial subpoena or formal request, along with a notice specifying the nature of the law enforcement inquiry, shall be served on the person or mailed to the person's last known mailing address on or before the subpoena is served on the financial institution unless a delay of notice has been obtained under Appendix H of this part.

C. The notice to the customer shall be in a format similar to Appendix L to this part and shall be personally served at least 10 days or mailed at least 14 days prior to the date on which access is sought.

D. The customer shall have 10 days to challenge a notice request when personal service is made and 14 days when service is by mail.

E. No access to financial records shall be attempted before the expiration of the perti-

nent time period while awaiting receipt of a potential customer challenge, or prior to the adjudication of any challenge made.

F. The official who signs the customer notice shall be designated to receive any challenge from the customer.

G. When a customer fails to file a challenge to access to financial records within the above pertinent time periods, or after a challenge is adjudicated in favor of the law enforcement office, the head of the office, or a designee, shall certify in writing to the financial institution that such office has complied with the requirements of 12 U.S.C. Chapter 35. No access to any financial records shall be made before such certification (Appendix M to this part) is provided the financial institution.

APPENDIX D TO PART 275—OBTAINING ACCESS BY SEARCH WARRANT

A. A Government authority may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure.

B. Unless a delay of notice has been obtained under provisions of Appendix H to this part, the law enforcement office shall, no later than 90 days after serving the search warrant, mail to the customer's last known address a copy of the search warrant together with the following notice:

"Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this [DoD office or activity] on [date] for the following purpose: [state purpose]. You may have rights under the Right to Financial Privacy Act of 1978."

C. In any state or territory of the United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands, search authorizations signed by installation commanders, military judges, or magistrates shall not be used to gain access to financial records.

APPENDIX E TO PART 275—OBTAINING ACCESS FOR FOREIGN INTELLIGENCE, FOREIGN COUNTERINTELLIGENCE, AND INTERNATIONAL TERRORIST ACTIVITIES OR INVESTIGATIONS

A. Financial records may be obtained from a financial institution (as identified at §275.3) by an intelligence organization, as identified in DoD Directive 5240.1¹, authorized to conduct intelligence activities, to include investigation or analyses related to international terrorism, pursuant to DoD Directive 5240.1 and Executive Order 12333.

¹Copies may be obtained at <http://www.dtic.mil/whs/directives/>.